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FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 9949
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS PRIORITY
RUEHGV/USMISSION GENEVA PRIORITY 7818
RUEHBY/AMEMBASSY CANBERRA 2979
RUEHKA/AMEMBASSY DHAKA 1216
RUEHNE/AMEMBASSY NEW DELHI 2175
RUEHKO/AMEMBASSY TOKYO 2441
RUEHWL/AMEMBASSY WELLINGTON 3016
RUEHHK/AMCONSUL HONG KONG 2926
RUEHPT/AMCONSUL PERTH 1090
RHMFIUU/BUMED WASHINGTON DC
RHHJJPI/USPACOM HONOLULU HI
RHHJJPI/PACOM IDHS HONOLULU HI
RUENAAA/SECNAV WASHDC
RUEKJCS/SECDEF WASHDC
RUEAWJB/DEPT OF JUSTICE WASHDC
RULSAV/NAVMEDRSCHCEN SILVER SPRING MD
RHEHNSC/NSC WASHDC
RUEAIIA/CIA WASHDC
RHEFDIA/DIA WASHINGTON DC

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SENSITIVE
SIPDIS

DEPT FOR P, EAP, EAP/MTS, EAP/MLS, EAP/RSP, G/AIAG,
OES/IHA, L, L/DL FOR DICKERSON
USAID FOR ANE/CLEMENTS AND GH/CARROLL
DEPT PASS TO HHS/WSTEIGER/ABHAT/MSTLOUIS AND HHS/NIH
DEPT PASS TO USDA/FAS/OSTA BRANT, ROSENBLUM
DOJ FOR OFL/HOLLIS
DOJ FOR OFL/HERRUP
GENEVA FOR WHO/HOHMAN
NSC FOR E.PHU
SECDEF FOR USDP/ISA/APSA D.WALTON

E.O. 12958: N/A

TAGS: [PGOV](#) [TBIO](#) [KFLU](#) [KLIQ](#) [ID](#)

SUBJECT: AVIAN INFLUENZA LAWSUIT AGAINST USG: REQUEST FOR
GUIDANCE ON COURT APPEARANCE

REF: A. USDOJ-JAKARTA EMAILS

[1](#)B. STATE 86555

[1](#)C. JAKARTA 1504 AND PREVIOUS

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[1](#)1. (U) This message is Sensitive but Unclassified--Please
handle accordingly.

[1](#)2. (U) This message provides recommendations as requested in
REF A and requests Department,s guidance by September 10.
Please see para 10 for action request.

[1](#)3. (SBU) SUMMARY: Legal proceedings are scheduled to begin
in the Central Jakarta District Court on September 17 in the
avian-influenza lawsuit against the USG and the World Health
Organization (WHO). Mission recommends that USG appear in
court on September 17 via local counsel to request that the
suit be dismissed on the grounds of sovereign immunity. A
key contact has told us that the Indonesian Department of
Foreign Affairs is prepared to support such a request.
Mission requests front channel guidance by September 10 and
authorization for the Ambassador to grant local counsel the
power of attorney. END SUMMARY.

RECOMMENDATION REGARDING APPEARANCE

[1](#)4. (SBU) On August 13, Mission sent a Diplomatic Note to the
Indonesian Department of Foreign Affairs (DEPLU) asserting

sovereign immunity, as instructed by Washington (REF B). Following the assertion of immunity, the Department of Justice (DOJ) requested Mission's recommendation as to whether USG, through locally hired counsel, should appear and offer legal defense, in the event DEPLU is unable to intervene on our behalf.

¶5. (SBU) During an August 27 meeting with the Ambassador, Frans Winarta, the DOJ-hired local counsel, explained that if the USG, or its agent, does not appear at the September 17 proceeding, the court could regard the absence of the defendant as the USG's acknowledgment of the plaintiff's claim and render a default judgment. Winarta recommended that he be authorized to appear at the September 17 proceeding to assert USG sovereign immunity and other grounds for dismissal. In order to assert sovereign immunity at this proceeding, Winarta will require the power of attorney to act on behalf of the USG in an Indonesian court.

¶6. (SBU) The Indonesian courts operate on a "three strikes, you're out" rule under which a court does not issue a default judgment until the defendant has received three summons and failed to appear for all three summons. According to Winarta, the USG would be considered to have received two summons so far: to appear on April 22 and May 13. The September 17 court date would constitute a third strike under Indonesian legal practice. According to Winarta, the validity of the service of those summons might have no bearing on the count, in the court's view.

¶7. (SBU) On September 2, DCM, Poloff and DOJ Resident Legal Advisor (RLA) met with Arif Havas Oegroseno, Director of DEPLU's Office of Political, Legal and Regional Treaties.

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Oegroseno stated that he would send Mission's diplomatic note asserting sovereign immunity to the court and would consider appending "a statement of interest" from DEPLU recognizing USG's immunity. Additionally, he would also have an informal conversation with the court. Oegroseno stressed that the court must conduct a proceeding on September 17 in order to dismiss the case.

¶8. (SBU) Winarta recommends avoiding a default judgment, as such a judgment could be seen as a lack of respect for the Indonesian courts and generate negative publicity toward the United States.

INFORMATION FROM WHO

¶9. (SBU) Embassy officers met with representatives of the World Health Organization (WHO), which is the co-defendant in the suit, in Jakarta on August 27. According to the Jakarta WHO office, no United Nations (UN) agency has ever appeared in court in Indonesia or any other country. WHO's note verbale had requested that DEPLU inform the courts of WHO's immunity. However, WHO had not received any acknowledgment of the note and was not taking any active steps to request DEPLU intervene on WHO's behalf. WHO maintained that it had not been properly served and that it was immune. DEPLU contacts in Oegroseno's office told Embassy officers on September 2 that their office had not received the WHO note asserting immunity.

ACTION REQUEST

¶10. (SBU) Mission recommends that local counsel attend the court proceedings on September 17 and assert the USG's claim of sovereign immunity. Mission also requests authorization for the Ambassador to sign a letter of power of attorney allowing Winarta, as local counsel, to appear in court on behalf of the USG. Finally, Mission requests the Department's guidance as to which specific points to make in its claim of sovereign immunity.

HUME